EDITORIAL NOTES.

INJUNCTIONS TO RESTRAIN LIBELS, AND COURTS OF CRIMINAL EQUITY.

AMONG the Abstracts of Cases which appeared in last month's issue was one decided by Judge BEATTY, United States District Judge for Idaho. The case, which was determined on the 11th of last July, was that of the Cœur d'Alene Consolidated and Mining Company *v.* Miners' Union of Wardner,[1] and grew out of trouble between the company and its men consequent on a strike. The miners were more or less riotous; so much so, in fact, that the Governor on June 4 issued a proclamation stating "that there now exists in the county of Shochone, State of Idaho, combinations of men confederating and conspiring for unlawful purposes . . . such combinations are preventing by force the owners of mines from working and developing the same, and from employing the persons of their choice." It is also, we believe, beyond dispute that the strikers were not only in possession of the mine for some time, but that they removed the new employees from their work and carried them to the borders of Montana, thus practically drumming them out of the State, and that at the time the legal proceedings were commenced the mine owners were practically unable, because of the actions and threats of the strikers, to run their mines or employ new men. Setting forth this state of things, the company came into the District Court asking that an injunction might be issued restraining the members of the union from further interfering, threatening or molesting its employees or entering its works. The Court granted the injunction.

This is not the first time that the powers of a Court of

[1] Reported in 51 Fed. Rep., 260. See AMER. LAW REG. AND REV., Vol. 31, p. 710

Equity have been used to prevent crime where property is threatened. In the case of the New York, Lake Erie and Western R. R. Co. *v.* Wenger,[1] Judge STONE issued an injunction restraining the ex-employees of a railroad company from going on the property of the company for the purpose of preventing freight cars from being moved by non-union hands. Perhaps the most important case is one in Massachusetts, where members of a union on strike were prevented by injunction from intimidating the new workmen by making a demonstration in front of the shop with banners bearing such inscriptions as: "Lasters are requested to keep away from P. P. Sherry's. Per order L. P. U."[2] Judge ALLEN says:[3] "The act of displaying banners with devices, as means of threats and intimidation to prevent persons from entering into or continuing in employment of plaintiffs, was injurious to the plaintiffs and illegal by common law and by statute.[4] We think the plaintiffs are not restricted to their remedy by an action at law, but are entitled to their relief by injunction." There is also a case in the Circuit Court for the Southern District of Ohio where the acts on the part of the members of a union, which were enjoined, consisted in attempting to "boycott" a publisher for refusing to unionize his office, by calling on the advertisers in his paper and threatening to withdraw their patronage, and persuade others to follow suit, if they continued to advertise in the paper.[5] Thus Judge BEATTY, District Judge of Idaho, had authority and precedent for his assertion that, "when the attempt to injure consists of acts or words which will operate to intimidate and prevent the customers of a party from dealing with, or

[1] 17 Wk. Law. Bul. (Ohio), 306 (1887), Cuyahoga County Court of Common Pleas.

[2] Sherry *v.* Perkins, *et. al.*, 147 Mass., 212 (1888).

[3] p. 214.

[4] Citing Pub. Sts. (Mass.), c. 74, Sec. 2; Walker *v.* Cronin, 107 Mass., 585.

[5] Casey *v.* Cincinnati Typographical Union No. 3, *et. al.*, 45 Fed. Rep., 135 (1891).

laborers working for him, the courts have with nearly equal unanimity interposed by injunction."[1]

With nearly equal unanimity the American courts have held that an injunction cannot be granted to restrain a libel. Though the courts have made many practical exceptions,[2] the main principle is constantly reiterated. Where property is not affected by the libel, of course there is no question that the Court of Equity has no jurisdiction.[3] But even where property and business is affected by the act, if at the same time it is a libel, it will not be enjoined by a Court of Chancery.[4] There are two reasons given for this refusal to grant an injunction where a libel is concerned. One is that it would interfere with that clause in all our constitutions which protects the liberty of speech and the press. The other and far more important reason is, that it would interfere with the jurisdiction of juries over questions of libel and slander. We, therefore, have this curious result: You can restrain a crime when a crime injures property, but you cannot restrain a libel though a libel injures property. Surely a jury trial is just as important to one accused of crime as to one sued for libel. What is the reason for this apparent contradiction? We think investigation will show that it rests more on the accident of history than on logic or legal principles.

The rise and progress of the power of the Court of Chancery to issue injunctions is one of the most interesting, as it is the most instructive, of legal historical studies. It is the history, as are all other powers of Chancery, of the development of law by men who had a stronger sense of justice between man and man than desire to preserve

[1] The qualification might have referred to Richter Bros. *v.* The Journeymen Tailors Union, 24 Wk. Law Bul. (Ohio), 189 (1890), Franklin County Common Pleas: We might say with absolute unanimity, however, because in that case no intimidation or threats were alleged, and this is the only case which would throw any doubt on such an assertion.

[2] See *infra*, 796.

[3] The New York Juvenile Guardian Society *v.* Roosevelt, 7 Daly (N. Y.), 188 (1877).

[4] Brandreth *v.* Lance, 8 Paige (N. Y. Ch.), 24 (1839); Richter Bros. *v.* Journeymen Tailors Union, *supra*.

individual liberty. This was the evil result of the separation of equity and the common law, and the consequent independent development of equity as a preventive of wrong, and the common law as a punishment for wrong. The equity lawyers, disregarding the method by which wrong should be punished, were, in their efforts to prevent wrong, constantly trampling on the love of liberty implanted in the heart of the Anglo-Saxon, which led him to regard with jealous care the prerogative of a freeman to have his guilt judged by a jury of his peers. Thus the Star Chamber, which has been aptly described as a Court of Criminal Equity, spent its time in issuing orders to persons forbidding them to commit crime. The popular feeling against the Court was based, not so much on the fact that "many new-fangled crimes were invented," as on the objection to the summary manner in which those charged with contempt of the Court's orders were convicted.

In one direction, however, the minds of the English people were deeply impressed by the Star Chamber's invention of crimes. So many publications were enjoined and public men protected from criticism by injunctions restraining so-called libelous publications and those which expressed opinions, that free speech rapidly became a thing of the past. And so deeply impressed were the people with the necessity of preserving the freedom of the press that impeachment threatened any Lord Chancellor who thereafter had the temerity to restrain a libel by injunction. In fact the issuance of such an injunction by the notorious SCROGGS was one of the grounds of his impeachment by the House of Commons.[1] And even as late as 1810, when Lord ELLENBOROUGH remarked at the trial of one who had destroyed a publicly-exhibited and indecent picture, which libeled the defendant's sister and brother-in-law, that, "upon an application to the Lord Chancellor, he would have granted an injunction against its exhibition;"[2] we are

[1] State Trials (1680), Vol. 8, p. 197.
[2] Du Bost *v.* Beresford 2 Camb., p. 512.

informed that the remark "excited great astonishment in the minds of all the practitioners of the Courts of Equity."[1] Until 1868, in England, as in America, the formula that equity will not restrain a libel was constantly in the mouths of the Chancellors. But as in America there has been no hesitation in restraining threatened crimes, provided they also injured property, which it is the peculiar province of the Courts of Equity to protect. Thus Vice-Chancellor MALINS, in Springhead Spinning Co. *v.* Riley,[2] issued an injunction restraining the members of a union on strike from placarding the town with posters asking workmen not to work for their old employer, because he thought these posters were part of a scheme to *intimidate* others, and not simply to *persuade* persons from seeking to take their places. And though the particular application of the rule has been doubted, the principle on which the case rests has never been questioned. In fact it has been distinctly made the basis of the principal American cases above quoted. Property was in danger, and the strong instinct on the part of the equity lawyer is to protect property. The consideration that by making a crime a contempt of court he was treading on the province of juries did not impress him as it did in the case of a libel, because historically the Star Chamber had not created crimes which were not crimes, as they had turned writings which were expressions of opinion and not libels into libels. It is true that no Chancellor ever pretended that he had any jurisdiction to restrain crimes as such. Such an assumption would show as mistaken conception of equity and as criminal disregard of individual rights as was exhibited by the framers of the Iowa legislation, which gives to a Court of Equity power to restrain the selling of liquor as a nuisance and to punish the act of Selling as a contempt.[3] Where a crime will

[1] One of Howell's Notes in 20 State Trials (issued in 1816), p. 799.

[2] L. R., 6 Eq., 551 (1868).

[3] See criticism of Mr. McMurtrie; Art. in Vol. 31 AMERICAN LAW REGISTER AND REVIEW, p. 1, "Equity Jurisdiction as Applied to Crimes and Misdemeanors."

affect property, because it is a crime, has not been to the Equity judges a sufficient reason why they should not interfere by injunction; but, except by one judge, the mere fact that an act injures property, is said not to be sufficient to warrant an injunction if the act is also a libel. However, if we examine the growth of the numerous exceptions to this last statement, we will find, in spite of the inherited prejudice against such injunctions, the chancellors' instinct to protect property is slowly rendering "meaningless where property is involved" the statement that equity will not restrain a libel.

The first class of exceptions to the rule that equity will not restrain a libel, is to be found in a case decided in 1742,[1] where Lord HARDWICKE restrained the publication of matter tending to prejudice the minds of the public against the case of suitors in his Court. The justice and wisdom of such an injunction has never been doubted.

The second class of cases is exemplified by the case of Gee *v.* Pritchard,[2] where Lord ELDON restrained the publication of letters not belonging to him who published them; thus laying down the rule, that the fact that a document contains a libel on B., cannot be used as an excuse for publishing it by A., if on account of its having belonged to B., he would otherwise have no right to publish it if it did not contain a libel. Although Lord ELDON himself questioned the case on the ground that one cannot be said to have property in letters written by another person, the particular documents retrained, and seems only to have followed the decision of his predecessors on this point with reluctance, no one has doubted the property of the rule.[3]

[1] Reprinted in 2 Atk., 469.

[2] 2 Sw. 402 (1818).

[3] See remarks of Lord ELDON, p. 441. The cases and authorities referred to by Lord ELDON in support of the theory that there is a property in letters, are Pope *v.* Earl, 2 Atl., 342 (1741); the language in Thompson *v.* Stanhope, Amb., 739; Forrester *v.* Waller, a case decided in 1741, and cited in Millar *v.* Taylor, 4 Burr., 2340 (1769); cited also in 2 Bro., P. C., p. 138, where under the head of injunctions for printing unpublished M.SS. without licence are mentioned several cases between 1732 and 1768.

The third exception established is that where one asserts that his goods are the goods of another, or does anything which would lead buyers to suppose that such is the case, the injured party is entitled to an injunction. This cannot always be said in strictness to be the case of a libel. Where the goods sold are better than his whose goods they are represented to be, there is no libel. The libel only occurs where the goods are inferior. At first, however, the jurisdiction to issue an injunction in such a case was denied. Thus, in Martin *v.* Wright,[1] Vice-Chancellor SHADWELL dismissed a motion to restrain one from exhibiting for money, a picture, purporting to be a picture of the plaintiff's, whereby he claimed his own sales, were diminished.[2] However, in Knott *v.* Morgan,[3] an injunction was granted to restrain the defendant from running an omnibus, having upon it names and words which formed a colorable combination of the names and words on the omnibusses of the plaintiff. Thus, advertisements calculated to induce the public to believe that the work sold was the work of a rival publisher, have been restrained.[4] Disparagement of anothers product, in your own advertisement, is legitimate; but the statement that what you sell is not your own, but the product of the labor of another and rival producer, is wrong. It is on this ground that the Court interferes to prevent one from copying the trade-marks of another.[5]

Following Martin *v.* Wright came the case of Clark *v.*

[1] 6 Sim., 297 (1833).

[2] The ground of the denial is not clear. There is some doubt whether the defendant exhibited the picture as a painting by the plaintiff. He exhibited it as a diorama, and certainly the plaintiff was not in the "diorama exhibition business." Had he been, it is said the injunction would have been granted. Citing Page *v.* Townsend, 5 Sim., 395 (1832), a case not directly in point. The Court seems, therefore, to have regarded the case as that of a man's attempting to sell something as another's, which that other never sold; and, therefore, property or business, was not injured. It may, however, be injured. (See infra next par.).

[3] 2 Keen, 213 (1836).

[4] Seeley *v.* Fisher, 11 Sim., 581 (1841); see also Lord Byron *v.* Johnson, 2 Mer., 29 (1816).

[5] Croft *v.* Day, 7 Beav., 84 (1843).

Freeman,[1] which seems to have decided that where one sells his products as the products of another, the other is not entitled to an injunction, no matter how much his business may be indirectly injured, if he does not, himself, produce similar articles. I say it seems as if this was the principle enunciated; though, as its predecessor, Martin *v.* Wright, it is not easy to see the exact grounds of the decision. Sir James Clarke, the plaintiff, was a celebrated specialist in consumption. Of course, he never was interested in selling quack medicine, and he attempted, by injunction, to restrain the defendant, a druggist, from selling pills, entitled "Sir James Clarke's Consumption Pills." The Master of the Rolls, Lord LANSDALE doubts whether the eminent physician has been injured in his ability to gain a livelihood, but he does not leave the reader certain whether he would have still refused the injunction had this not been the case. Had Dr. Clark been a pill vendor, he says the Court would have granted the injunction.[2] Afterwards it was doubted whether the injunction should not have been issued on the ground that the physician had a property in his name.[3] But it seems to us that the question of property in the name is not in point, but rather, if protection of property is the basis of an injunction, was his property injured or his ability to gain property impaired by the continued and wrongful act of the defendants?

The next class of cases in which an exception is made to the rule that equity will not restrain a libel, is that an injunction will be granted to restrain one from using the name of another in such a way that the other will be exposed to civil liabilities, or in other words, render him liable to lose his property. Thus in Routh *v.* Webster[4] the provisional directors of a joint stock company having, without the authority of the plaintiff, published a prospectus stating him to be a trustee of the company, they were restrained

[1] 11 Beav., 112 (1848).

[2] p. 119.

[3] Remarks of Lord Cairns in Maxwell *v.* Hogg, L.R., 2 Ch. App,, p. 310, (1867).

[4] 10 Beav., 561 (1847).

by an injunction. Here we can point out that the difference between this case and that of Sir JAMES CLARK'S, assuming that the physician had his reputation injured by the pills, seems to us to be immaterial. In one, the ability to gain property is impaired, in the other, loss of property is threatened. A distinction which would enable a court of equity to stretch forth its arm and ward off threatened danger to property, but render it powerless to protect the means of acquiring property is too chimerical long to be tolerated.

The next and last exception arises in relation to property in patents, and is similar to the rule, that an injunction will be granted to prevent one threatening another man's employees or customers. You cannot go about asserting another's patent is invalid, and an infringement of your own patent, and saying you intend to bring suit against those who sell your rival's goods, provided it is evident you have no such intention.[1]

All these cases, however, were treated simply as exceptions to the general rule that a libel cannot be restrained in equity even though it injures property or the means of acquiring property.[2]

Yet a rule of law which would permit an injunction when the injury to a man's ability to acquire or keep property by falsely saying a ware is of his manufacture when it is not, and yet which would not allow such an injunction when the injury resulted from a false statement of fact concerning his business or occupation, is neither founded in logic or common sense. This was clearly seen by MALINS, Vice-Chancellor, in the much abused case of Dixon *v.* Holden.[3] A published a notice, which was false, that B was a partner in a bankrupt firm. B was well known as a partner in another and solvent firm, and his ability to ac-

[1] Rollins *v.* Hinks, L. R., 13 Eq., 355 (1872.) This case was not decided until after the case of Dixon *v.* Holden, but the rule of law enunciated is now recognized in America, where Dixon *v.* Holden has always been repudiated. (See infra 767).

[2] See remarks by Lord Chancellor COTTENHAM, in Fleming *v.* Newton 1 H. L. C., 363, 377 (1848).

[3] L. R. 7 Eq., 480 (1869).

quire a living would be obviously impaired by the wide publication of the false statement. The injunction was granted, on the broad ground that the Court of Equity has jurisdiction to restrain the publication of any document tending to the destruction of the property of the plaintiff, even though the publication of the document is at the same time a libel. The Vice-Chancellor has been criticised on both sides of the Atlantic[1] for introducing an entirely new rule of law, whereas we cannot but think that the exceptions to the doctrine of libel already existing, and which have been pointed out, would have to be abandoned, or else the general principle, as recognized by the Vice Chancellor, would have to be adopted; viz., that whenever property is threatened by the publication of a document, the fact that it is a libel will not prevent its publication from being restrained by injunction. The adoption of this principle, for which Vice-Chancellor MALINS contended, would have the effect of putting libels and crimes, with respect to injunctions, on the same footing. Where an act involving a libel or a crime threatened property, it would be restrained; not because the act was a libel or a crime, but rather in spite of its being a crime or libel, and because it threatened property. And, indeed, as the same reason, why an injunction should not be granted, namely, the interference with the province of the jury, obtains in both a crime and libel, and the same reason, viz., the protection of property, urges the Court to grant an injunction, it seems but right that both should stand or fall together. And yet, as we have said, the decisions of Judge MALINS has been severely criticised on both sides of the Atlantic; while in England, in the case of Prudential Ass. Co. *v.* Knott,[2] the Vice-Chancellor's decision was expressly overruled. This last case was an attempt to restrain the publication of a book purporting to make a false statement about the business methods and financial standing of the company,

[1] Mulkern *v.* Ward, 13 Eq., 619 (1872), and cases *infra*; Kidd *v.* Horry, 28 Fed. Rep., 773 (1886), *infra* 767.

[2] 10 Ch. App., 142 (1875).

plaintiff seeking the injunction. The Court did not consider whether the statements were true or false, or whether they would injure the property of the company, but contented themselves with denying their jurisdiction.

There is some doubt whether Dixon *v.* Holden, or Prudential Ass. Co. *v.* Knott expresses the law on the sub-

NOTE *a*.

Mr. Justice BRADLEY, in Kidd *v.* Horry,[1] thought that legislation in England had now established the rule of Dixon *v.* Holden, as opposed to the rule of the latter case of Prudential Ins. Co. *v.* Knott, and in support of this view he cites Acts of Parliament and recent English decisions. In this view we are compelled to believe the late learned jurist was mistaken, though he was undoubtedly correct in assuming that what was done in Dixon *v.* Holden, *i.e.*, restrain a libel by injunction, where it affected property, is done every day by English Courts. The principle enunciated by Vice-Chancellor MALVINS in Dixon *v.* Holden, however, has never been adopted by any other judge. In view of Mr. Justice BRADLEY'S opinion, it may be of interest to point out how with the complicated result has been accomplished.

In 1854 Parliament passed the Common Law Procedure Act, the seventy-ninth section of which runs as follows: "In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may in like case or manner as heretofore provided with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract of like kind arising out of the same contract, or relating to the same property or right."[2] A reference to the subject of mandamus[3] shows that the Court could issue the injunction only at the conclusion of an action. This defect was cured by a subsequent section,[4] and it was provided that a writ of injunction could issue at any time after the commencement of an action, proper security being offered. It may be assumed that this Act did not extend by one iota the power of injunctions out of Chancellry, and the jurisdictions to issue injunctions by the Common Law Courts was confined to two cases: First, where an action had been commenced to prevent the repetition of the injury complained of before the matter was determined, and, second, to prevent the repetition of an injury after a jury had determined that the act was an injury. While limited, however, an injunction could issue under the circumstances above mentioned to restrain a libel trespass or any other act.[5] This was the state of the law at the time of Nixon *v.* Holden, and it was also probably the state of the law at the time of arguing the case of Prudential Ins. Co. *v.* Knott, which was decided

[1] 28 Fed. Rep., 773 (1886).

[2] 17 & 18 Vict. chapter 125, § 79, p. 442.

[3] Id. §§ 68–72.

[4] Id. § 82.

[5] Saxby *v.* Esterbrook, L. R. 3 C. P. D., 339 (1878); Shaw *et al.* Earl of Jersey L. R., 4 C. P. D., 120 (1879).

ject as it exists in England to-day, the question having been complicated and obscured by legislation. Leaving the explanation of the effect of this legislation and the present condition of the law in England to a note,[a] we will pass on

January 20, 1875, but on the 2d day of November, 1874, the Supreme Court of Judicature Act went into effect. This Act, after consolidating the several Courts into the High Court of Justice, proceeds in one of its clauses as follows:[1] "A mandamus or injunction may be granted or a receiver appointed by an *interlocutory order* of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made." It resulted from this section that any Court sitting as a Court of Equity could restrain, until the final hearing of an action, any act which they saw fit.[2] It is evident that the Act gave the Court of Equity the power to issue an injunction as an interlocutory order whenever they thought proper. They could, therefore, on an interlocutory application restrain a libel. And if a suit was brought for damages on account of a libel, at the same time the plaintiff could apply for a temporary injunction restraining further publication, and on the termination of the suit in his favor, could secure a permanent injunction against the repetition of the injury. But the Acts did not give to Courts of Chancery any new power to grant injunctions in a simple application for an *injunction*, not as an accompaniment of a suit or a proceeding in the Courts of Chancery. On an application for an injunction it would not be granted to-day, if it could not be granted before the Acts. The case of Day *v.* Brownrigg[3] shows that there was no difference in the principle on which a court grants injunctions made by the *Judicature Act*. The case of the Prudential Ass. Co. *v.* Knott has never been overruled. The cases which have been supposed by the judiciary of this country to overrule that decision are totally distinct. The mistake on the part of American Bench and Bar arises from the language of the Syllabus in Thorley's Cattle Food Co. *v.* Massam[4] and also from the language of Vice-Chancellor MALINS.

The Court of Chancery had just decided that the goods of the two contending parties were made from the same receipt, and that neither had an exclusive right to the process.[5] The Vice-Chancellor decided that after that decision had been made, he would entertain, and if proper issue an injunction restraining one party from asserting that his was the only true article, and all others were imitations. The Vice-Chancellor only

[1] 36 & 37 Vict., ch. 66, § 25, sub. 8: L. R. 8. State 321.

[2] Beddow *v.* Beddow, L. R., 9 Ch., Div. 89 (1878).

[3] L. R. 10 Ch., Div. 294 (1878).

[4] L. R., 6 Ch., Div. 582 (1877).

[5] Massam *v.* J. W. Thorley's Cattle Food Co., L. R. 6 Ch. Div., 574 (1877). This decision in as far as the court determined the products were made from the same receipt was confirmed, but in other respects it was reversed. Massam *v.* Thorley's Cattle Food Co., L. R. 14, Ch. Div., 748 (1880).

to our American exceptions to the rule that a libel cannot be restrained in equity.

Of course there is no doubt but that where literary or other property exists in the publications, though it also happens to be a libel, it will be restrained, or that one will be restrained who sells his own goods as the goods of another,

refused the injunction because the need for it was not clearly made out. In other words a right had been determined by a court and an injunction was asked to restrain its violation. It would have been perhaps a stretch of the Act to issue the injunction, provided we assume that such an injunction could not issue before the Act. However, the power to issue the injunction was certainly given by the spirit of the Judiciary Act if not by the letter. The spirit of that Act and the Act of 1854 being to enable a court of law which had once determined that the acts of one party were any injury to another to prevent their repetition. And, therefore, when in 1880 the Court of Appeals had stated it, as its opinion also, that the two products were made from the same receipt,[1] and one party still continued to send round advertisements falsely stating that they only held the true receipt, Vice-Chancellor MALINS issued a permanent injunction restraining the further publication of the advertisements making the false statements, and this action on his part was upheld by the Court of Appeals.[2]

The two other cases cited by American judges as proving that the English courts have repudiated *in toto* the old doctrine that equity will not interfere to restrain the publication of a libel, are Quartz Hill Consolidated Gold Mining Co. *v.* Beall,[3] and Loog *v.* Bean.[4] But on inspection we find that they are both cases of an interlocutory injunction pending the hearing of the case on the merits, and in the first, as a matter of fact, the injunction was refused. In the second case the injunction was granted.

We are forced, therefore, to the opinion that the late Mr. Justice BRADLEY was mistaken, when he says: that the Prudential Life Ins. Co. *v.* Knott, has been overruled in England, and the rule of Vice-Chancellor MALINS, in Dixon *v.* Holden, that where property was injured though by a libel, equity would interfere by injunction, has been adopted in consequence of the Common Law Procedure Act of 1854, and the Judicature Act of 1873. Practically, it is true, a man, as a consequence of these Acts, can always have a libel restrained by injunction. He can bring his action, procure a temporary injunction, and then, if the case is decided in his favor, a permanent injunction. Consequently, we may never have the question of Dixon *v.* Holden, or Prudential Ins. Co. *v.* Knott, raised in an English Court, and which case would be followed will always remain a debatable question.

[1] Massam *v.* Thorley's Cattle Food Co., L. R., 14 Ch., Div. 748

[2] Thorley's Cattle Food Co. *v.* Massam, L. R., 14 Ch. Div., 763, (1880).

[3] L. R., 20 Ch. Div., 501 (1882).

[4] L. R., 26 Ch. Div., 306 (1884).

though on account of the goods sold being of inferior quality there may be a libel in the represention. And, although we do not find any case on the subject, we cannot but believe that courts which would restrain a man from hurting another's business by selling inferior goods as the goods of that other, would also restrain him from selling goods in another's name, which, on account of their character, hurt that other's business, thereby depriving him of the means of acquiring property.

The jurisdiction to restrain one man from threatening to sue the customers of another who sell articles which he alleged are infringements of a patent held by him, where it is shown that he has no such intention, was until lately in doubt. Thus Mr. Justice BRADLEY, in Kidd *v.* Horry,[1] denied his power to issue an injunction to restrain the defendants from threatening to sue the purchasers of a rival patented article, though it does not appear whether the threat was *bona fide* or not. However, he criticises a New York case,[2] where the threat was not *bona fide* and where the injunction had been issued, and it is fair to presume that he would have denied his right to issue the injunction, even if it had been shown that there did not exist on the part of the defendant any intention to sue the customers of the plaintiff. Judge CARPENTER, of the Circuit Court for the District of Massachusetts, in Balto. Car Wheel Co. *v.* Bemies,[3] followed Mr. Justice BRADLEY, but when the case of a man threatening to sue another's customers for infringement of patent, when he had no intention of doing so, came fairly before a Federal Court, the injunction was granted.[4] Our Courts, however, still repudiate their power to issue an injunction to restrain false statements concerning another's business, whether those statements are assertions that a patent is invalid,[5] or that trade-marks are being in-

[1] 28 Fed. Rep., 773 (1886).
[2] P. 776, the case of Croft *v.* Richardson, 59 How Pr., 356 (1880).
[3] 29 Fed. Rep., 95 (1886).
[4] Emack *v.* Kane (C. Court N. D., Ill.), 34 Fed. Rep., 46 (1888).
[5] Boston Diatite Co. *v.* Florence Mfg. Co., 114 Mass., 69 (1873).

fringed,[1] or that a company is insolvent,[2] that a manufacturer employ's "scab" labor,[3] statements about a man's life tending to injure his business,[4] or a false statement that Company A and not Company B has received a prize at a State fair.[5]

We do not wish, for a moment, to be considered as contending that an injunction should have been issued in all these cases, but simply to point out that there is no valid reason why an act, which injures property, should not be restrained, although it is also a libel, when an act, which is a crime, is restrained if it injures property. All acts, which injure property, are not restrained in equity. The jurisdiction of the Court is limited to cases where, unless it interfered, irreparable injury to the property would result. Why in such case the protecting power of the Court should be withheld simply because the act which injures consists in words is not clear to the writer. It is true, the liberty of the press is sacred. Let us hope it will always remain so; but it is the liberty to express and write freely our opinion. The liberty which would allow a man to ruin beyond repair the property of his neighbor, by circulating false statements of facts, is the liberty of anarchy, and not of civilized society. Surely an action which can prevent the unlawful injury to property is to be commended. The liberties of a people are not threatened by injunctions seeking to prevent unlawful acts, but by the trial of the fact, whether the act forbidden has been committed, by a judge, *ex parte*, and without a jury. This is a real danger, but it will not be averted by allowing injunctions to issue to restrain crimes and not libels. Such a position being illogical will result in one of two results equally to be deplored—either the practice

[1] Manger Agt. Dick., 55 How. (N. Y. Pr.), 132 (1878).

[2] Life Assn. *v.* Boogher, 3 Mo. App., 173 (1876).

[3] Richter Bros. *v.* The Journeymen Tailors' Union, 24 Wk. Bul. (Ohio Com. Pleas, Franklin Co.), 189, (1890).

[4] Brandreth *v.* Lance, 8 Paige (N. Y. Ch.), 24 (1839).

[5] The Singer Mfg. Co. *v.* Domestic Sewing Machine Co., 49 Ga., 70 (1872).

of issuing injunctions to restrain crimes where they also injure property will be abandoned, and a useful function of the Court lost, or the practice being continued, acts, which really amount to a crime, will be tried by a judge without a jury.[1] This state of facts it seems to us would warrant the interference of a Legislature, to harmonize the principles of equity with the safe guards which the common law as hedged around the conviction and punishment for crime. Had the two systems been developed from the beginning by the same men, an injunction would have probably been issued, whenever irreparable damage to property was threatened, but the fact whether the injunction had been disregarded, if the act also amounted to a crime or a libel, would, at the request of the accused, be submitted to a jury. Why not adopt this method now? By doing so, the beneficial workings of an injunction would be retained, and yet crimes and libels would still be within the province of juries. W. D. L.

WITH this number THE AMERICAN LAW REGISTER AND REVIEW presents to its readers the first installment of the annotations written and edited in pursuance of the plan outlined in the August number of this periodical. The plan, briefly stated, contemplates the publication of about sixty annotations a year upon important cases recently decided by the courts. These cases and the annotations appended to them deal with problems drawn from various branches of the law, and they are selected in such a way as to lay before our readers briefs upon constantly recurring questions of great importance to the lawyer in the active practice of his profession. Each of the departments into which the field of law has been divided is presided over by an eminent specialist who will super-

[1] The case of U. S. *v.* Kane, 23 Fed. Rep., 748 (1885), while the course of Justice BREWER was perfectly consistent with precedent, is an example of crimes being condemned by a judge without a verdict of a jury. The case has a "false ring" in the ears of an Anglo-Saxon, and serves as a warning as to what may happen if one is charged with disregarding injunctions restraining crime.

vise the work of his assistants and edit every annotation that appears. The assistants themselves are lawyers in active practice at the bars of the largest cities of Union, whose services we have been able to secure by reason of their particular interest in the branch of law upon which their work will be done.

By a reference to the annotations, which appear elsewhere, it will be seen that in all cases where a mere syllabus is a sufficient presentation of the case, no more extended statement of the facts is made, and in no case will opinions be printed in full. But in some instance (as, for example, in the case of Mullen *v.* Doyle) the purpose of the annotation cannot be accomplished without a brief statement of facts and a short abstract of the opinion of the Court. In such cases it has been thought well to preserve the usual form of case-reporting, including the insertion of the names of counsel.

It must not to be forgotten that it is part of this annotation scheme to publish from time to time monographs upon legal topics of great interest and importance, each monograph being the work of an assistant in the department to which the subject of the monograph belongs. These monographs will be published in book form by the University of Pennsylvania Press, and it is fair to predict for the rest of the series a large sale, which has been realized in the case of the three monographs already issued.

It is hoped that the readers of the AMERICAN LAW REGISTER AND REVIEW will appreciate the importance of an enterprise which furnishes to them, in convenient and accessible form, sixty elaborate briefs in a single year, fresh from the pens of lawyers whose especial attention is given to the subject of which they treat and prepared under the eye of those than whom none are more eminent in the branch of law over which they preside. G. W. P.